



ORIGINAL

1 THE STATE BAR OF CALIFORNIA  
 2 OFFICE OF THE CHIEF TRIAL COUNSEL  
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**FILED**  
 FEB 23 2005 *KJP*  
 STATE BAR COURT  
 CLERK'S OFFICE  
 LOS ANGELES

# PUBLIC MATTER

THE STATE BAR COURT  
 HEARING DEPARTMENT - LOS ANGELES

11 In the Matter of ) Case Nos. 04-O-15448, 05-O-00038  
 12 KENDALL LEE BYRD, )  
 13 No. 108173, ) NOTICE OF DISCIPLINARY CHARGES  
 14 A Member of the State Bar. )

### NOTICE - FAILURE TO RESPOND!

16 **IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE**  
 17 **TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR**  
 18 **IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR**  
 19 **DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN**  
 20 **INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE**  
 21 **PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE**  
 22 **ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF**  
 23 **THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO**  
 24 **PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR**  
 25 **DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO**  
 26 **ADDITIONAL DISCIPLINE.**

27 **STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN**  
 28 **RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.**

**IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY**  
**THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF**  
**ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE**  
**PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED**  
**BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION**  
**WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE**  
**BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE**  
**ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE**  
**ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON**  
**PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH**



1           7. On or about February 7, 2003, Respondent appeared on behalf of Dwan in Dwan's  
2 criminal case and the OSC was dropped. The hearing was continued to February 21, 2003.  
3 Respondent had notice of the continued hearing date as he was in court when the hearing was  
4 continued.

5           8. On or about February 11, 2003, Respondent requested another \$1,000 from Berth. At  
6 that time, Dwan's sister, Deborah Owens, sent Respondent a check for \$1,000.

7           9. On or about February 21, 2003, Respondent appeared on behalf of Dwan through  
8 substitute counsel in Dwan's criminal case. Substitute counsel requested a continuance on  
9 behalf of the defense, which was granted. The hearing was continued to March 14, 2003. The  
10 Court properly served Respondent with notice of the continued hearing date.

11           10. On or about March 14, 2003, Respondent appeared on behalf of Dwan in Dwan's  
12 criminal matter. The hearing was continued to April 25, 2003. On or about April 25, 2003,  
13 Respondent appeared on behalf of Dwan in Dwan's criminal case. The Court scheduled the trial  
14 in Dwan's criminal case for May 14, 2003. Respondent had notice of the trial date as he was in  
15 court when the Court scheduled the trial.

16           11. On or about May 14, 2003, Respondent appeared on behalf of Dwan through  
17 substitute counsel for trial in Dwan's criminal case. Substitute counsel informed the Court that  
18 Respondent was unavailable for trial, and the Court continued the trial date to May 19, 2003.  
19 The Court properly served Respondent with notice of the continued trial date.

20           12. On or about May 19, 2003, Respondent appeared on behalf of Dwan in Dwan's  
21 criminal case. Respondent informed the Court that he was unavailable for trial and the Court  
22 continued the trial date to May 30, 2003. On or about May 30, 2003, Respondent appeared on  
23 behalf of Dwan in Dwan's criminal case. Respondent again informed the Court that he was  
24 unavailable for trial, and the Court continued the trial to August 4, 2003.

25           13. The trial in Dwan's criminal case was continued many times after on or about  
26 August 4, 2003 until March 8, 2004.

27           14. On or about November 8, 2003, Respondent requested another \$1,500 from Berth for  
28 his representation of Dwan. At that time, Berth gave Respondent another \$1,500.

1           15. On or about November 16, 2003, Respondent requested another \$1,500 from Berth  
2 for his representation of Dwan. At that time, Berth gave Respondent another \$1,500.

3           16. On or about November 18, 2003, Respondent requested another \$1,500 from Berth  
4 for his representation of Dwan. At that time, Berth gave Respondent another \$1,500.

5           17. On or about March 8, 2004, Respondent appeared at trial on Dwan's behalf.  
6 Respondent had not done any investigation on Dwan's behalf before trial. Respondent did not  
7 locate or attempt to locate any evidence or witnesses on behalf of Dwan and did not present any  
8 evidence or witnesses on Dwan's behalf at the trial of Dwan's criminal case. On or about March  
9 12, 2004, Dwan was found guilty by the jury, and sentencing was scheduled for April 30, 2004.

10           18. On or about March 19, 2004, Respondent requested another \$2,500 from Berth for  
11 his representation of Dwan. At that time, Berth gave Respondent another \$2,500.

12           19. On or about April 30, 2004, Respondent appeared on Dwan's behalf through  
13 substitute counsel as Respondent was unavailable for the sentencing hearing. The Court  
14 continued the sentencing hearing to May 14, 2004 and properly served Respondent with notice  
15 of the continued date.

16           20. On or about May 14, 2004, Respondent appeared on Dwan's behalf at the sentencing  
17 hearing. The Court continued the sentencing hearing to May 28, 2004. Respondent had notice  
18 of the continued date as he was in court when the Court continued the hearing.

19           21. On or about May 28, 2004, Respondent appeared on Dwan's behalf through  
20 substitute counsel as Respondent was unavailable for the sentencing hearing. The Court  
21 continued the sentencing hearing to June 11, 2004 and properly served Respondent with notice  
22 of the continued date.

23           22. On or about June 11, 2004, Respondent appeared on Dwan's behalf through  
24 substitute counsel as Respondent was unavailable for the sentencing hearing. The Court  
25 continued the sentencing hearing to June 18, 2004 and properly served Respondent with notice  
26 of the continued date.

27           23. On or about June 17, 2004, Berth employed another attorney, James Gass, to  
28 continue the representation of Dwan.





1 willing to testify on Michael's behalf and informed Respondent of this witness and the witness's  
2 contact information, Respondent never attempted to contact the witness. Respondent did not  
3 present any defense on behalf of Michael at the preliminary hearing.

4 36. On or about September 9, 2004, Respondent appeared on behalf of Michael at the  
5 trial of Michael's criminal case. Respondent did not locate or attempt to locate any evidence or  
6 witnesses on behalf of Michael and did not present any evidence or witnesses on Michael's  
7 behalf at the trial of Michael's criminal case. On or about September 10, 2004, Michael was  
8 found guilty by the jury and sentencing was scheduled for October 20, 2004.

9 37. On or about October 20, 2004, Respondent failed to appear for the sentencing  
10 hearing in Michael's criminal case, despite the fact that Respondent had prior notice of the  
11 hearing. The Court continued the hearing to November 5, 2004 and properly served Respondent  
12 with notice of the continuance.

13 38. On or about November 5, 2004, Respondent appeared for the sentencing hearing in  
14 Michael's criminal case. Michael was sentenced to 12 years in prison. After the hearing,  
15 Respondent informed Tamara and Michael that he would file a Notice of Appeal on Michael's  
16 behalf in Michael's criminal case. To date, Respondent has failed to file the Notice of Appeal on  
17 Michael's behalf in Michael's criminal case.

18 39. By failing to meet with Michael when Michael requested meetings with Respondent  
19 to discuss his case; by failing to provide Michael with the documentation regarding Michael's  
20 criminal case that Michael requested from Respondent; by failing to contact the witness that  
21 Tamara found on Michael's behalf; by failing to present any defense on behalf of Michael at the  
22 preliminary hearing in Michael's criminal case; by failing to locate or attempt to locate any  
23 evidence or witnesses on behalf of Michael; by failing to present any evidence or witnesses on  
24 Michael's behalf at the trial of Michael's criminal case; and by failing to appear at the  
25 sentencing hearing of October 20, 2004 on Michael's behalf, Respondent intentionally,  
26 recklessly or repeatedly failed to perform legal services with competence.

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1 49. By not releasing the file to Tamara or Michael at Tamara's and Michael's request,  
2 Respondent failed, upon termination of employment to release promptly to a client, at the  
3 request of the client, all the client's papers.

4  
5 COUNT SIX

6 Case No. 05-O-00038  
7 Business and Professions Code section 6068(i)  
8 [Failure to Cooperate in State Bar Investigation]

9 50. Respondent wilfully violated Business and Professions Code section 6068(i), by  
10 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
11 follows:

12 51. On or about December 27, 2004, the State Bar opened an investigation, case number  
13 05-O-00038, pursuant to a complaint filed by Tamara and Michael Teague (the "Teague  
14 matter").

15 52. On or about January 18, 2005, State Bar Investigator Joy Nunley wrote to  
16 Respondent regarding the Teague matter. The investigator's letter was placed in a sealed  
17 envelope correctly addressed to Respondent at his State Bar of California membership records  
18 address. The letter was promptly mailed by first class mail, postage prepaid, by depositing for  
19 collection by the United States Postal Service in the ordinary course of business. The United  
20 States Postal Service did not return the investigator's letter as undeliverable or for any other  
21 reason.

22 53. The investigator's letter requested that Respondent respond in writing to specified  
23 allegations of misconduct being investigated by the State Bar in the Teague matter. Respondent  
24 did not respond to the investigator's letter or otherwise communicate with the investigator.

25 54. By not providing a written response to the allegations in the Teague matter or  
26 otherwise cooperating in the investigation of the Teague matter, Respondent failed to cooperate  
27 in a disciplinary investigation.

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**NOTICE - INACTIVE ENROLLMENT!**

**YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

**NOTICE - COST ASSESSMENT!**

**IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10. SEE RULE 280, RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL

Dated: February 23, 2005

By:   
SUZAN J. ANDERSON  
Deputy Trial Counsel

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**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 04-O-15448; 05-O-00038**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

**NOTICE OF DISCIPLINARY CHARGES**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 71603901984439824264, at Los Angeles, on the date shown below, addressed to:

**KENDALL LEE BYRD  
28690 OLD TOWN FRONT STREET  
#370  
TEMECULA, CALIFORNIA 92590**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**N/A**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: 2/23/05

SIGNED:   
Yolanda Muse Moore  
Declarant